

48A C.J.S. Judges § 85

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

III. Term and Tenure of Office; Vacancy

F. Vacancy in Office

4. Tenure of Person Selected to Fill Vacancy

§ 85. Tenure of appointee

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West's Key Number Digest

West's Key Number Digest, [Judges](#)  7, 8

An appointment to fill a vacancy in a judicial office is, in some jurisdictions, temporary, and not for the unexpired term, though in other jurisdictions, the appointee holds such office until the end of the term for which the original incumbent was selected and until his or her successor is duly elected and qualified.

An appointment to fill a vacancy in a judicial office is, in some jurisdictions, temporary and not for the unexpired term.¹ For example, a constitution may permit a governor to appoint an individual to temporarily fill a judicial office until a date following the next general election² or "until a successor is elected and qualified" at the next general election occurring more than one year after the appointment.³ In other jurisdictions, however, the appointee holds such office until the end of the term for which the original incumbent was selected and until his or her successor is duly elected and qualified.⁴

In no case can the legislature authorize the governor to appoint a judge to fill a vacancy for a period longer than that prescribed by the constitution.⁵

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Footnotes

- 1 Utah—*Monson v. Hall*, 584 P.2d 833 (Utah 1978).
- 2 Mich.—*Attorney General v. Clarke*, 489 Mich. 61, 803 N.W.2d 130 (2011).
Nev.—*Lueck v. Teuton*, 125 Nev. 674, 219 P.3d 895 (2009).
- 3 Minn.—*Clark v. Pawlenty*, 755 N.W.2d 293 (Minn. 2008).
- 4 Cal.—*Anderson v. Phillips*, 13 Cal. 3d 733, 119 Cal. Rptr. 879, 532 P.2d 1247 (1975).
Constitutionality upheld
Vt.—*Peck v. Douglas*, 148 Vt. 128, 530 A.2d 551 (1987).
Appointment after reelection and resignation
Cal.—*Caldwell v. Bruning*, 64 Cal. 2d 111, 48 Cal. Rptr. 849, 410 P.2d 353 (1966).
Effect of mistake in appointment
Ga.—*Britton v. Bowden*, 188 Ga. 806, 5 S.E.2d 47 (1939).
- 5 Conn.—*State ex rel. Cotter v. Leipner*, 138 Conn. 153, 83 A.2d 169 (1951).
As to the filling of judicial vacancies by gubernatorial appointment, see § 81.
Constitutional provision inapplicable to appointment of additional judges
Pa.—*Staisey v. Tucker*, 7 Pa. Commw. 649, 300 A.2d 518 (1973).